

ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
AUG 28 2007

CLERK'S OFFICE
U.S. DISTRICT COURT
ANN ARBOR, MI

VONLEE NICOLE TITLOW,

Petitioner,

Civil Action No.

07 - 13614

-vs.-

Hon.

S. L. BURT, Warden,

MARIANNE O. BATTANI

MAGISTRATE JUDGE MORGAN

Respondent.

Michigan Attorney General
Attorney for Respondent

Laura Kathleen Sutton (P40775)
Attorney for Petitioner Titlow

NOTICE OF HEARING

MOTION TO STAY HABEAS CORPUS PROCEEDINGS

**BRIEF IN SUPPORT OF
MOTION TO STAY HABEAS CORPUS PROCEEDINGS**

PROOF OF SERVICE

BY:

LAURA KATHLEEN SUTTON (P40775)
Attorney for Petitioner Titlow
P.O. Box 388
Manchester, Michigan 48158
(734) 428-7445

UNITED STATES DISTRICT COURT
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MOTION TO STAY HABEAS CORPUS PROCEEDINGS

Petitioner VONLEE NICOLE TITLOW, by and through her attorney, Laura Kathleen Sutton (P40775), pursuant to 28 U.S.C. §2254, respectfully requests this Honorable Court to grant her a Stay of Writ of Habeas Corpus Proceedings, and states:

1. Petitioner Titlow is a citizen of the United States.
2. Petitioner Titlow is a resident of the State of Michigan, currently domiciled in the Southern Michigan Correctional Facility in Jackson, Michigan. Petitioner is currently being held as prisoner number 384878.
3. Southern Michigan Correctional Facility is a state prison operated by the State of Michigan. Respondent S. L. Burt is the Warden of the Southern Michigan Correctional Facility.

4. On March 20, 2002, Petitioner was convicted of one count of aiding and abetting a second degree murder, M.C.L. 750.317, in Oakland County, Michigan, Circuit Court. On April 17, 2002, the Honorable Wendy Potts, presiding trial judge, imposed a prison term of 20 to 40 years for the conviction.

5. On this date Petitioner Titlow concurrently filed her petition for writ of habeas corpus which contains both exhausted and non-exhausted claims of federal constitutional violations.

6. Habeas petitioners must exhaust available state remedies before seeking a federal writ of habeas corpus. 28 U.S.C. §2254(b)(1); Baldwin v. Reese, 541 U.S. 27, 29 (2004). They must also comply with the one-year statute of limitations set forth in 28 U.S.C. §2244(d).

7. Petitioner Titlow has pending before the Michigan Supreme Court issues claiming that (1) her Sixth Amendment rights to the effective assistance of trial and appellate counsel were violated, (2) her Fourteenth Amendment rights were violated because the evidence was insufficient to support the verdict; (3) the trial court's permitting Petitioner's jury to decide if "inaction or non-action" constituted malice sufficient for second degree murder resulted in an invalid conviction and violated due process; and (4) the current sentence is illegal under Blakely v. Washington, 542 US 296 (2004). People v. Vonlee Nicole Titlow, Michigan Supreme Court File No. 134183, filed June 15, 2007.¹

8. In Rhines v. Weber, 544 U.S. 269; 125 S. Ct. 1528, 1534-1535; 161 L. Ed.2d 440 (2005), the United States Supreme Court held that district courts may stay and hold exhausted claims in abeyance while a prisoner exhausts state

¹ A copy of the appellate docket entries are attached to this motion.

remedies as to other claims. In Pace v. DiGuglielmo, 544 U.S. 408; 125 S. Ct. 1807, 1814; 161 L. Ed.2d 669 (2005), the Supreme Court stated that prisoners seeking state post-conviction remedies may file a "protective" habeas petition in federal court and ask the federal court to stay and hold in abeyance the federal habeas proceeding until state remedies are exhausted.

9. Petitioner Titlow has filed her petition for writ of habeas corpus and requests that it be held in abeyance in order to protect her rights to seek habeas relief until she has exhausted available state remedies as to her federal claims.

10. Petitioner Titlow respectfully requests that this Court hold this matter in abeyance pending resolution of her federal claims by the state courts and permit amendment to this petition within sixty (60) days of her exhausting all state court remedies.

11. The state cannot possibly be prejudiced by a stay of proceedings as Petitioner remains in custody and federal court proceedings have only begun; no Rule 5 materials have been ordered.

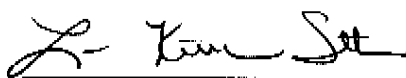
12. Given that petitioners have only one opportunity to seek habeas relief, absent extraordinary circumstances, that no Rule 5 materials have been ordered, and that serious claims of Federal Constitutional violations are currently pending before the Michigan Supreme Court in this case, holding this case in abeyance and administratively closing matters pending exhaustion, serves not only Petitioner Titlow, it serves the interests of comity and justice as well.

RELIEF SOUGHT

WHEREFORE, Petitioner VONLEE NICOLE TITLOW respectfully requests this Honorable Court to grant the following relief:

- a. Hold litigation of this matter in abeyance pending exhaustion of state court remedies and furthermore allow Petitioner Titlow to amend her petition and continue litigation providing she does so within sixty (60) days of exhausting state court remedies for her claims.

Respectfully submitted,



LAURA KATHLEEN SUTTON (P40775)
Attorney for Petitioner Titlow
PO Box 388
Manchester, Michigan 48158
(734) 428-7445

Dated: August 28, 2007.

UNITED STATES DISTRICT COURT
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Michigan Attorney General
Attorney for Respondent

Laura Kathleen Sutton (P40775)
Attorney for Petitioner Titlow

**MEMORANDUM BRIEF IN SUPPORT OF
MOTION TO STAY HABEAS CORPUS PROCEEDINGS**

Petitioner VONLEE NICOLE TITLOW, by and through her attorney, Laura Kathleen Sutton, relies on the following authority in support of her Motion to Stay Habeas Corpus Proceedings: Kenny v. Tamayo-Reyes, 504 U.S. 1, 10 (1992) (purpose of exhaustion to provide state court opportunity to review federal claims); Rhines v. Weber, 544 U.S. 269; 125 S. Ct. 1528; 161 L. Ed.2d 440 (2005); and Pace v. DiGuglielmo, 544 U.S. 408; 125 S. Ct. 1807; 161 L. Ed.2d 669 (2005) (holding that district courts may stay habeas proceedings pending exhaustion of remedies).

Pursuant to the above authority Petitioner Titlow seeks a stay of habeas corpus proceedings to permit her to exhaust *all* of her federal constitutional

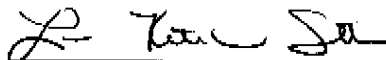
claims in the Michigan Courts prior to this Court considering the merits of her assignment of constitutional violations.

RELIEF SOUGHT

WHEREFORE, Petitioner VONLEE NICOLE TITLOW respectfully requests this Honorable Court to grant the following relief:

- a. Hold litigation of this matter in abeyance pending exhaustion of state court remedies and furthermore allow Petitioner Titlow to amend her petition and continue litigation providing she does so within sixty (60) days of exhausting state court remedies for her claims.

Respectfully submitted,



LAURA KATHLEEN SUTTON (P40775)

Attorney for Petitioner Titlow

PO Box 388

Manchester, Michigan 48158

(734) 428-7445

Dated: August 28, 2007.

MICHIGAN COURT OF APPEALS

COA Case Number: 273274

SCt Case Number: 134183

PEOPLE OF MI V VONLEE NICOLE TITLOW

1	PEOPLE OF MI	PL-AE	PRS	(1163) GORCYCA DAVID G P/A OAKLAND COUNTY PROSECUTOR 1200 NORTH TELEGRAPH ROAD PONTIAC MI 48341-1031 248-858-0656
2	TITLOW VONLEE NICOLE	DF-AT	RET	(40775) SUTTON LAURA K PO BOX 388 MANCHESTER MI 48158 734-428-7445

Status: Case Concluded; File Archived SCT Status: APPL

80

09/26/2006	1	Delayed App for Leave - Criminal Proof Of Service Date: 9/26/2006 Check #: 6652 Fee: \$375.00 Receipt#: 2732741 Register of Actions: Y Attorney: 40775 - SUTTON LAURA K
01/03/2006	2	Order Appealed From From: OAKLAND COUNTY CIRCUIT COURT Case Number: 01-177745-FC Trial Court Judge: 29604 POTTS WENDY LYNN Nature of Case: Relief from Judgment
09/26/2006	3	Transcript Filed By Party Date: 9/26/2006 Filed By Attorney: 40775 - SUTTON LAURA K Hearings: 11/9/2005 7/25/2001 10/29/2001 11/29/2001 2/6/2002 4/17/2002 Comments: ALSO ADDTL EXCERPTS
09/26/2006	4	Presentence Investigation Report - Confidential Date: 9/26/2006 For Party: 2 TITLOW VONLEE NICOLE DF-AT Attorney: 40775 - SUTTON LAURA K
04/17/2007	5	Submitted On Motion Docket Event: 1 Delayed App for Leave - Criminal District: T Item #: 3
04/27/2007	6	Order: Application - Deny - Delayed App for Leave Click here to view document in PDF format. Event: 1 Delayed App for Leave - Criminal Panel: DAS,ETF,JRC

Attorney: 40775 - SUTTON LAURA K
05/30/2007 7 **File Closed-Out**
File Location: F
06/15/2007 8 **SCt: Application for Leave to SCt**
Supreme Court No. 134183
Notice Date: 7/10/2007
Fee: Paid Check No.:31675
For Party: 2
Attorney: 40775 - SUTTON LAURA K
06/18/2007 9 **Supreme Court - File Sent To**
File Location: Z
Comments: SC# 134183
06/19/2007 10 **SCt: COA File - Received**
7 tr;
07/02/2007 11 **SCt: Trial Court Record Received**
9 tr; 2 files

Case Listing Complete

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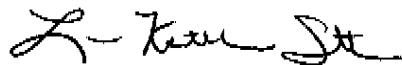
Michigan Attorney General
Attorney for Respondent

Laura Kathleen Sutton (P40775)
Attorney for Petitioner Titlow

PROOF OF SERVICE

Laura Kathleen Sutton, attorney at law, hereby certifies that on August 28, 2007, she personally filed with this Court the following: Motion to Stay Habeas Corpus Proceedings, Brief In Support of Motion to Stay Habeas Corpus Proceedings, Notice of Hearing, along with the Proof of Service, and provided one copy to the court for mailing to: b. Eric Restuccia, Assistant Michigan Attorney General, Criminal Appellate Division, P.O. Box 30217, Lansing, Michigan 48909.

Respectfully submitted,



Laura Kathleen Sutton (P40775)
Attorney for Petitioner Titlow
P.O. Box 388
Manchester, Michigan 48158
(734) 428-7445

Dated: August 28, 2007.

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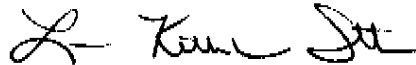
Michigan Attorney General
Attorney for Respondent

Laura Kathleen Sutton (P40775)
Attorney for Petitioner Titlow

NOTICE OF HEARING

PLEASE TAKE NOTICE that Petitioner's Motion to Stay Habeas Corpus Proceedings will be brought for hearing and/or decision by the U.S. District Court, with all deliberate speed at a date and time to set by the Court.

Respectfully submitted,



Laura Kathleen Sutton (P40775)
Attorney for Petitioner Titlow
P.O. Box 388
Manchester, Michigan 48158
(734) 428-7445

Dated: August 28, 2007.